

must attest to the fact that they meet the definition of HMO in 42 U.S.C. 300gg–91(b)(3)—section 2791(b)(3) of the PHS Act.

(4) Beginning with bids due in June 2014 (for plan year 2015), all MA organizations with potentially qualifying MA EPs or potentially qualifying MA-affiliated eligible hospitals under the MA EHR incentive program must identify themselves to CMS in a form and manner specified by CMS, as part of submissions of initial bids under section 1854(a)(1)(A) of the Act. “Potentially qualifying MA EPs” and “potentially qualifying MA-affiliated eligible hospitals” are those EPs and hospitals that meet the respective definitions of “qualifying MA EP” and “qualifying MA-affiliated eligible hospital” in § 495.200 but who (or which) are not meaningful users of certified EHR technology.

(b) *Identification of qualifying MA EPs and qualifying MA-affiliated eligible hospitals.* (1) A qualifying MA organization, as part of its initial bid starting with plan year 2012, must make a preliminary identification of potentially qualifying MA EPs and potentially qualifying MA-affiliated eligible hospitals for which the organization is seeking incentive payments for the current plan year.

(2) A qualifying MA organization must provide CMS with the following for each MA EP or eligible hospital when reporting under either paragraph (b)(1) or (b)(3) of this section:

(i) The MA EP’s or MA-affiliated eligible hospital’s name.

(ii) The address of the MA EP’s practice or MA-affiliated eligible hospital’s location.

(iii) NPI.

(iv) An attestation by MA organization specifying that the MA EP or MA-affiliated eligible hospital meets the eligibility criteria.

(3) Final identification of potentially qualifying MA EP or MA-affiliated eligible hospital must be made within 60 days of the close of the payment year as defined in § 495.200 for which MA EHR incentive payments are being sought.

(4) Beginning plan year 2015 and for subsequent plan years, all qualifying MA organizations, as part of their ini-

tial bids in June for the following plan year must—

(i) Identify potentially qualifying MA EPs and potentially qualifying MA-affiliated eligible hospitals;

(ii) Include information specified in paragraph (b)(2)(i)(A) through (C) of this section for each professional and hospital.

(iii) Include an attestation that each professional and hospital either meets or does not meet the EHR incentive payment eligibility criteria.

**§ 495.204 Incentive payments to qualifying MA organizations for MA-EPs and MA-affiliated eligible hospitals.**

(a) *General rule.* A qualifying MA organization receives an incentive payment for its qualifying MA-EPs and its qualifying MA-eligible hospitals. The incentive payment amount paid to a qualifying MA organization for a—

(1) Qualifying MA-EP is the amount determined under paragraph (b) of this section; and

(2) Qualifying MA-eligible hospital is the amount determined under paragraph (c) of this section.

(b) *Amount payable to qualifying MA organization for qualifying MA EPs.* (1) CMS substitutes an amount determined to be equivalent to the amount computed under § 495.102 of this part.

(2) The qualifying MA organization must report to CMS within 60 days of the close of the calendar year, the aggregate annual amount of revenue attributable to providing services that would otherwise be covered as professional services under Part B received by each qualifying MA EP for enrollees in MA plans of the MA organization in the payment year.

(3) CMS calculates the incentive amount for the MA organization for each qualifying MA EP as an amount equal to 75 percent of the reported annual revenue specified in paragraph (b)(2) of this section, up to the maximum amounts specified under section 1848(o)(1)(B) of the Act.

(4) For qualifying MA EPs who are compensated on a salaried basis, CMS requires the qualifying MA organization to develop a methodology for estimating the portion of each qualifying MA EP’s salary attributable to providing services that would otherwise be

covered as professional services under Part B to MA plan enrollees of the MA organization in the payment year. The methodology—

- (i) Must be approved by CMS; and
- (ii) May include an additional amount related to overhead, where appropriate, estimated to account for the MA-enrollee related Part B practice costs of the salaried qualifying MA EP.
- (iii) Methodological proposals must be submitted to CMS by June of the payment year and must be auditable by an independent third-party. CMS will review and approve or disapprove such proposals in a timely manner.

(5) For qualifying MA EPs who are not salaried, qualifying MA organizations may obtain attestations from such qualifying MA EPs (or from entities that the MA EPs are employed by or with which they have a partnership interest) as to the amount of compensation received by such EPs for MA plan enrollees of the MA organization. The organizations may submit to CMS compensation information for each such MA EP based on such attestations.

(6) For qualifying MA EPs who are not salaried, qualified MA organizations may have qualifying MA EPs (or from entities that the MA EPs are employed by or with which they have a partnership interest) send MA organization compensation information directly to CMS. CMS will use the information provided in this subparagraph or paragraph (b)(5) of this section for no other purpose than to compute the amount of EHR incentive payment due the MA organization.

(c) *Amount payable to qualifying MA organization for qualifying MA-affiliated eligible hospitals.* (1)(i) CMS substitutes an amount determined to be equivalent to the amount computed under § 495.104, to the extent data are not available to compute payments for qualifying MA-affiliated eligible hospitals under the Medicare FFS EHR hospital incentive program.

(ii) CMS uses the same methodology and defines “inpatient-bed-days” and other terms as used under the Medicare FFS EHR hospital incentive program in § 495.104 of this part in computing amounts due qualifying MA organiza-

tions for MA-affiliated eligible hospitals.

(2) To the extent data are available, qualifying MA organizations must receive hospital incentive payments through their affiliated hospitals under the Medicare FFS EHR hospital incentive program, rather than through the MA EHR hospital incentive program.

(d) *Payment to qualifying MA organizations.* CMS makes payment to qualifying MA organizations for qualifying MA EPs only under the MA EHR incentive program and not under the Medicare FFS EHR incentive program to the extent an EP has earned less than the maximum incentive payment for the same period under the Medicare FFS EHR incentive program.

(e) *Payment review under MA.* To ensure the accuracy of the incentive payments, CMS conducts selected compliance reviews of qualifying MA organizations to ensure that EPs and eligible hospitals for which such qualifying organizations received incentive payments were meaningful EHR users in accordance with § 422.504 of this chapter.

(1) The reviews include validation of the status of the organization as a qualifying MA organization, verification of meaningful use and review of data used to calculate incentive payments.

(2) MA organizations are required to maintain evidence of their qualification to receive incentive payments and the data necessary to accurately calculate incentive payments.

(3) Documents and records must be maintained for 6 years from the date such payments are made with respect to a given payment year.

(4) Payments that result from incorrect or fraudulent attestations, cost data, or any other submission required to establish eligibility or to qualify for such payment, will be recouped by CMS from the MA organization.

#### **§ 495.206 Timeframe for payment to qualifying MA organizations.**

(a) CMS makes payment to qualifying MA organizations for qualifying MA EPs under the MA EHR incentive program after computing incentive payments due under the Medicare FFS